

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

KARS 4 KIDS INC.,

Plaintiff,

V.

AMERICA CAN!,

Defendant.

Civil Action No. 14-7770 (PGS/LHG)

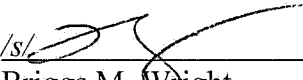
**DECLARATION OF BRIGGS M.
WRIGHT IN SUPPORT OF
PLAINTIFF KARS 4 KIDS INC.'S
MOTION *IN LIMINE* NO. 3 TO
EXCLUDE EVIDENCE, TESTIMONY,
AND ARGUMENT REGARDING
AMERICA CAN'S BUSINESS
REGISTRATIONS**

I declare as follows:

1. I am an attorney with the law firm of Orrick, Herrington & Sutcliffe LLP, and counsel of record for Plaintiff Kars 4 Kids Inc. (“Kars 4 Kids”). I make this declaration of my own personal knowledge and, if called as a witness, I could and would testify competently to the truth of the matters set forth herein.
2. Attached hereto as **Exhibit 1** is a true and correct copy of documents purporting to be assumed name certificates filed with the Office of the Secretary of State of Texas produced by Defendant America Can! (“America Can”) in the above-captioned litigation.
3. Attached hereto as **Exhibit 2** is a true and correct copy of excerpts from the transcript of the deposition of America Can’s witness and CEO Richard Marquez, dated November 14, 2017.

I hereby declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed in New York, NY on February 14th, 2019.



Briggs M. Wright

EXHIBIT 1

00111302493

FEE FOR FILING AT OFFICE OF SECRETARY OF STATE: \$25.00

FILED
In the Office of the
Secretary of State of Texas

AUG 14 1989

Clerk J M
Corporations SectionASSUMED NAME CERTIFICATE
FOR AN INCORPORATED BUSINESS OR PROFESSION

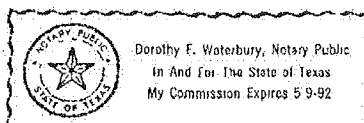
1. The assumed name under which the business or professional service is or is to be conducted or rendered is Cars for Kids
2. The name of the incorporated business or profession as stated in its Articles of Incorporation or comparable document is Texas Can !
3. The state, country, or other jurisdiction under the laws of which it was incorporated is Texas, and the address of its registered or similar office in that jurisdiction is 4245 N. Central Expressway, Suite 430, LB 130, Dallas, Texas 75205
4. The period, not to exceed ten years, during which the assumed name will be used is 10 years
5. The corporation is a (circle one): business corporation, non-profit corporation, professional corporation, professional association or other type of corporation (specify) _____, or other type of incorporated business, professional or other association or legal entity (specify) _____
6. If the corporation is required to maintain a registered office in Texas, the address of the registered office is 11106 Snow White, Dallas, Texas 75229 and the name of its REGISTERED AGENT at such address is John K. England
The address of the principal office (if not the same as the registered office) is _____
7. If the corporation is not required to or does not maintain a registered office in Texas, the office address in Texas is _____
and if the corporation is not incorporated, organized or associated under the laws of Texas, the address of its place of business in Texas is _____
and the office address elsewhere is _____
8. The county or counties where business or professional services are being or are to be conducted or rendered under such assumed name are (if applicable, use the designation "ALL" or "ALL EXCEPT _____"):

ALL COUNTIES IN TEXAS

[Signature]
Signature of officer, representative
or attorney-in-fact of the corporation

Before me on this 11th day of August, 19 89,
personally appeared David H. Foss and
acknowledged to me that he executed the foregoing certificate for
the purposes therein expressed.

(Notary seal)



Dorothy F. Waterbury
Notary Public Dallas County


NOTE: A certificate executed and acknowledged by an attorney-in-fact shall include a statement that the attorney-in-fact has been duly authorized in writing by his principal to execute and acknowledge the same.

CAN-00000337

00111302494

ATTORNEY'S CERTIFICATE AND ACKNOWLEDGEMENT

I hereby certify and acknowledge that I am the attorney-in-fact for Texans Can! and have been duly authorized in writing by to Texans Can! execute and acknowledge the Assumed Name Certificate to which this certification has been attached.



David H. Pace
State Bar No. 15392950

00111302490

FEE FOR FILING AT OFFICE OF SECRETARY OF STATE: \$25.00

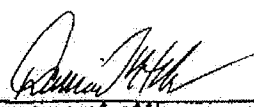
FILED
In the Office of the
Secretary of State of Texas

AUG 14 1989

Clerk I.M.
Corporations SectionASSUMED NAME CERTIFICATE
FOR AN INCORPORATED BUSINESS OR PROFESSION

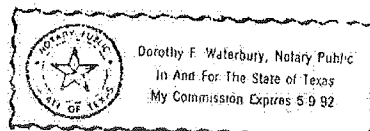
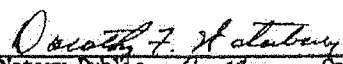
1. The assumed name under which the business or professional service is or is to be conducted or rendered is Kars for Kids
2. The name of the incorporated business or profession as stated in its Articles of Incorporation or comparable document is Texas Can 1
3. The state, country, or other jurisdiction under the laws of which it was incorporated is Texas, and the address of its registered or similar office in that jurisdiction is 4245 N. Central Expressway, Suite 430, LB 130, Dallas, Texas 75205
4. The period, not to exceed ten years, during which the assumed name will be used is 10 years
5. The corporation is a (circle one): business corporation, (non-profit corporation), professional corporation, professional association or other type of corporation (specify) _____ or other type of incorporated business, professional or other association or legal entity (specify) _____
6. If the corporation is required to maintain a registered office in Texas, the address of the registered office is 11106 Snow White, Dallas, Texas 75229 and the name of its REGISTERED AGENT at such address is John K. England
The address of the principal office (if not the same as the registered office) is _____
7. If the corporation is not required to or does not maintain a registered office in Texas, the office address in Texas is _____
and if the corporation is not incorporated, organized or associated under the laws of Texas, the address of its place of business in Texas is _____
and the office address elsewhere is _____
8. The county or counties where business or professional services are being or are to be conducted or rendered under such assumed name are (if applicable, use the designation "ALL" or "ALL EXCEPT _____"):

ALL COUNTIES IN TEXAS


 Signature of officer, representative
or attorney-in-fact of the corporation

Before me on this 11th day of August, 19 88,
personally appeared Daniel H. Kars and
acknowledged to me that he executed the foregoing certificate for
the purposes therein expressed.

(Notary seal)



 Notary Public Dallas County


NOTE: A certificate executed and acknowledged by an attorney-in-fact shall include a statement that the attorney-in-fact has been duly authorized in writing by his principal to execute and acknowledge the same.

CAN-00000335

00111302491

ATTORNEY'S CERTIFICATE AND ACKNOWLEDGEMENT

I hereby certify and acknowledge that I am the attorney-in-fact for Texans Can! and have been duly authorized in writing by Texans Can! to execute and acknowledge the Assumed Name Certificate to which this certification has been attached.



David H. Pace
State Bar No. 15392950

EXHIBIT 2

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW JERSEY
3 -----X
KARS 4 KIDS INC.,

4 Plaintiff,

5 -vs.-

6 AMERICA CAN!

7 Defendant.

8 Civil Action No. 14-7770
9 -----X

10 2200 Ross Avenue
11 Dallas, Texas

12 November 14, 2017
13 9:27 a.m.

14 VIDEOTAPED DEPOSITION of RICHARD MARQUEZ,
15 before Terralyn J. Gentry, CSR in and for the
16 State of Texas.

17

18

19

20

21

22

23 ELLEN GRAUER COURT REPORTING CO. LLC
24 126 East 56th Street, Fifth Floor
25 New York, New York 10022
212-750-6434
REF: 116147

1 A P P E A R A N C E S:

2

3 ORRICK, HERRINGTON & SUTCLIFFE LLP

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11 pvogl@orrick.com

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14 DELEON LAW GROUP

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17 Addison, Texas 75001

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21

22

23

24

25

1 A P P E A R A N C E S: (Cont'd)

2

3 YANAROS LAW, P.C.

4 FOR THE DEFENDANT:

5 BY: VALERIE WILDE

6 (512) 826-7553

7 valerie@yanaroslaw.com

8

9

10 ALSO PRESENT:

11 Richard Osborn, Videographer

12

13

14

15

16

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1 ----- I N D E X -----

2	WITNESS	EXAMINATION BY	PAGE
3	RICHARD MARQUEZ	MR. LITTERINE-KAUFMAN	8
4		MR. TORRES-RODRIGUEZ	217

5

6

7 ----- E X H I B I T S -----

8	PLAINTIFF'S	DESCRIPTION	FOR I.D.
9	Exhibit 1	4/22/13 email chain between	42
10		Brown, Marquez, Bernal, and	
11		Harbeson w/assumed names	
12		attachment	
13	Exhibit 2	7/20/93 - Cars for Kids, Car	78
14		Contribution Campaign	
15		Dallas Can Academy	
16	Exhibit 3	Revocation of Attorney/	85
17		Domestic Representative and	
18		Appointment of Attorney/	
19		Domestic Representative	
20	Exhibit 4	11/29/12 email chain between	88
21		Marquez and Rios	
22	Exhibit 5	4/24/13 email chain between	98
23		Marquez and Wentworth	
24	Exhibit 6	Branding Guidelines	115
25	Exhibit 7	Website printout	125

1	----- E X H I B I T S (Cont'd)-----	
2	PLAINTIFF'S DESCRIPTION	FOR I.D.
3	Exhibit 8	8/19/11 - email from 130
4		Wentworth to Marquez
5	Exhibit 9	3/31/14 - email chain 139
6		between Parish, Marquez,
7		Wentworth, and Rios
8	Exhibit 10	Photograph 149
9	Exhibit 11	12/18/12 email from 153
10		Wentworth to Marquez
11	Exhibit 12	4/6/12 email chain between 156
12		Marquez and Wentworth
13	Exhibit 13	5/12/14 email chain between 169
14		Marquez and Rios
15	Exhibit 14	5/21/12 email chain between 175
16		Marquez, Wentworth, and Rios
17	Exhibit 15	12/28/12 email chain between 179
18		Wentworth, Marquez, and Rios
19	Exhibit 16	12/25/13 email chain between 183
20		Marquez, Pulianda, and
21		Wentworth
22	Exhibit 17	2/25/12 email from Marquez 186
23		to Wentworth
24	Exhibit 18	3/11/14 email chain between 189
25		Marquez and Wentworth

1 ----- E X H I B I T S (Cont'd)-----

2 PLAINTIFF'S DESCRIPTION FOR I.D.

3 Exhibit 19 7/5/11 email chain between 197

4 Marquez, Rios and Wentworth

5 Exhibit 20 12/18/13 email chain between 206

6 Marquez, Zamora, Jasso,

7 Washington, et al.

8

9 DEFENDANT'S

10 Exhibit 1 Secretary of State Document 220

11 Exhibit 2 12/91 - Assumed Name 222

12 Certificate

13 Exhibit 3 8/14/89 - Assumed Name 224

14 Certificate

15 Exhibit 4 8/14/89 - Assumed Name 225

16 Certificate

17 Exhibit 5 Business Organizations 226

18 Inquiry

19

20 (EXHIBITS TO BE PRODUCED)

21

22

23

24

25

1 MARQUEZ

2 Q. Okay. Do you know if they've been produced
3 to --

4 A. Yes.

5 Q. -- the plaintiff?

6 A. Yes.

7 Q. Are there -- can you describe for me the
8 particular records you have in mind, just what types of
9 documents they are?

10 A. They'll basically say the vehicle -- the
11 vehicle, the VIN numbers, and -- and so all the
12 appropriate information, where it was donated and so on.
13 And I don't know if it has the disposition in there,
14 but -- yeah.

15 Q. Are the forms similar to Plaintiff's Exhibit 2,
16 the document in front of you?

17 A. I don't think all of them looked this way. I
18 think some of them are just on a -- I wouldn't say a
19 spreadsheet, but I think they're laid out in individual
20 sheets.

21 Q. Okay. To the best of your knowledge, when did
22 America Can first use the phrase "cars for kids" to
23 advertise its car-donation program?

24 A. I couldn't tell you.

25 Q. Okay. You mentioned an "assumed name

1 MARQUEZ

2 A. No, it's a legal, State document.

3 Q. Okay. It wasn't something that America Can
4 published, was it?

5 A. It would be fraud.

6 Q. Why would it be fraud?

7 A. It's a -- you can't -- you can't forge or
8 republish or do anything with state documents. It has a
9 seal, and they can --

10 Q. I see.

11 A. You don't mess with any governmental documents,
12 whatsoever.

13 Q. Was that document displayed by America Can?

14 A. No, but it was in the records.

15 Q. Okay. It was kept out in a filing --

16 A. Yes.

17 Q. -- cabinet?

18 A. Yeah.

19 Q. Do you know when America Can first distributed
20 an advertisement that used the phrase "cars for kids"?

21 A. No.

22 (Sotto voce discussion between

23 Mr. Litterine-Kaufman and Mr. Vogl.)

24 MR. LITTERINE-KAUFMAN: Let's go off the
25 record for one quick second. I just need to figure out